STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SMITH, Minors.

UNPUBLISHED
May 20, 2014

No. 318662
Wayne Circuit Court
Family Division
LC No. 11-503262-NA

Before: GLEICHER, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor children, JS and MS, pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This appeal arises from allegations that respondent physically abused JS in September, 2011. According to the petition seeking temporary custody of JS, Child Protective Services ("CPS") received a complaint on September 14, 2011, alleging that JS was found to have several "marks and bruises on his neck and back[,] including tire marks on his back[,] as a result of being assaulted by [respondent]." JS was removed from respondent's care on the same day. On September 15, 2011, JS "disclosed to CPS that [respondent] beat him with an ABC board that he described as a toy." JS also stated that respondent "put an ink pen to his neck" and threatened to kill him, and that respondent "hit him with the tire from a bike." JS reported that respondent used cocaine, and "described [respondent] breaking up leaves and putting them in a paper wrapping."

An original petition seeking temporary custody of JS was authorized on September 15, 2011, and an amended petition was authorized on September 28, 2011. JS was voluntarily placed with his grandmother. The trial court noted that respondent had previously received services from DHS, and ordered that supervised visits be allowed. On November 28, 2011, respondent waived her right to a trial on the amended petition and admitted to hitting JS with a belt, but denied striking him with a bike tire. Respondent admitted that she struck JS with sufficient force to cause welts and bruises. Respondent denied using cocaine, but admitted to using marijuana and admitted to one prior CPS complaint, in 2007, alleging physical neglect and marijuana use by respondent, and that this complaint was denied. Respondent denied knowledge of two other CPS complaints in 2008 and 2009, but agreed that it was possible that these complaints occurred and were denied. Respondent also admitted that she had a history of mental health issues, including

schizophrenia and depression, and that she was not currently taking any medication for these issues because she was pregnant. The trial court accepted respondent's admissions and exercised jurisdiction over JS.

The trial court then presented respondent with a parent-agency treatment plan consisting of "[f]amily counseling, individual counseling, parenting classes, mental health services, domestic violence and anger classes[,] and random drug screens." The trial court adopted the parent-agency plan and ordered that visitation take place, supervised by DHS.

Respondent's second child, MS was born on February 12, 2012. On February 23, 2012, a petition seeking temporary custody of MS was filed and authorized. According to the petition, CPS received a complaint of physical abuse of MS on February 14, 2012. The petition also alleged that respondent admitted to using marijuana during her pregnancy, and that MS tested positive for marijuana at birth. At the preliminary hearing regarding this petition, respondent stated that she was unemployed and had not worked in 10 months. Respondent's visitation time with JS had been suspended because respondent did not attend two visits, but visitation was to be reinstated. At this time, MS was placed with the same grandmother with whom JS was living. The trial court ordered that respondent be allowed supervised visitation with MS.

Two years of hearings followed, revealing that respondent had an issue with marijuana use and a volatile temper. DHS made recommendations for services, some of which respondent availed herself of, some of which respondent sought alternative treatment, and some of which respondent ignored. She regularly missed visits with the minor children and had an extensive history of either missing drug screens or testing positive.[1] At times she became combative with DHS staff, threatening them, her mother, and other treatment providers, causing services for her benefit to be discontinued. The trial court continued to provide respondent with visitation, and ordered DHS to make reasonable efforts to facilitate respondent's participation in counseling, parenting classes and anger management. Respondent successfully completed some of these programs, while failing to complete drug rehabilitation.[2]

Following a review hearing on May 16, 2013, the foster care worker assigned to the case recommended that a permanent custody petition be filed due to the length of time that the minor children had been in case and because respondent had "not had consistent drug screens yet." DHS indicated that their "biggest concern" was obtaining therapy for JS and respondent. At the conclusion of the hearing, the trial court ordered that a permanent custody petition be filed

[1] Respondent missed numerous visits with the minor children and missed 69 drug screens from January 3, 2012, and July 5, 2013.

[2] Respondent completed parenting classes on November 4, 2011, and completed anger management classes on November 30, 2011, but DHS contended that she failed to benefit from these classes. The record reveals that following completion of these classes respondent threatened to kill the grandmother with whom the minor children had been placed if she were to lose her parenting rights. She also continued to threaten DHS staff.

"based on the length of time that we have had the children in care . . . ." A permanent custody petition was authorized on August 8, 2013.

II. TERMINATION HEARING

Stacy Gullatt is a foster care specialist with DHS, assigned to the case approximately two months prior to the termination hearing. She testified that the treatment plan required respondent to complete a psychological evaluation, a psychiatric evaluation, parenting classes, anger management classes, mental health services, random drug screenings, and substance abuse counseling, and to maintain suitable housing and income, and that DHS assisted respondent in obtaining these services. Gullatt testified that the issues that needed to be resolved were respondent's mental health issues and her substance abuse issues.

As to respondent's substance abuse issues, Gullatt testified that respondent was first referred to substance abuse counseling on November 8, 2011. However, respondent was terminated from counseling due to nonparticipation. Respondent was re-referred for substance abuse counseling on March 22, 2012, but was again terminated for nonparticipation. Respondent was again referred for substance abuse counseling on September 13, 2012; however, respondent was again terminated due to nonparticipation and failed drug screenings. Respondent tested positive for marijuana 13 times between February 29, 2012, and June 6, 2013, tested positive for alcohol on May 4, 2013, and positive for benzodiazepine on September 18, 2012.

As to respondent's mental health issues, Gullatt testified that respondent was referred for parenting classes on November 4, 2011, and completed those classes on April 24, 2012. However, as evidenced by respondent's inability to control her anger and continued marijuana use, respondent did not benefit from those classes. Respondent was referred for parenting classes a second time on June 13, 2012, but did not complete the classes due to noncompliance. Respondent was referred to domestic violence and anger management classes on November 30, 2011, and completed the program. However, Gullatt opined that respondent did not benefit from the program, as she "still had threatening behaviors that [Gullatt] witnessed, that [Gullatt] ha[s] statements from other workers and relatives that said she still verbally and physically makes threats." Respondent was referred to these classes a second time on June 13, 2012, but respondent did not complete the program due to noncompliance. DHS referred respondent a third time on September 14, 2012, and respondent completed the program. However, Gullatt testified that respondent continued to demonstrate threatening behavior, "showed signs of wanting to hurt people, wanting to physically do something to them. She's threatened [Gullatt's] life." Gullatt testified that when she attempted to visit respondent's home, respondent did not allow Gullatt to inspect the home, and then "sent four or five text messages saying what she should have did [sic] to me while I was in her home." In one text message, sent in April, 2013, respondent stated, "I should have fucked you up while you were in my house." According to Gullatt, respondent threatened to physically harm another DHS worker immediately before the termination hearing.

Regarding mental health therapy, Gullatt testified as follows: Respondent was referred for a psychological evaluation on June 12, 2012; however, she was not allowed to complete the evaluation because she became physically aggressive with staff when she checked in for the appointment. A second referral for a psychological examination was made on September 14,

2012, and an appointment was scheduled for September 27, 2012. However, the evaluation was not completed because respondent did not attend the appointment. A third referral was made on January 10, 2013, and the evaluation was completed. The evaluation recommended additional individual counseling beyond what respondent was receiving on her own through Southwest Solutions.[3] However, respondent had last attended counseling at Southwest Solutions on May 24, 2013.

Regarding visitation, respondent never progressed beyond supervised visits because respondent continued to exhibit violent behavior and did not comply with her treatment plan. In the recent past, visitation was sporadic and inconsistent, but a firm schedule was never put in place. Respondent never obtained a source of legal income during the pendency of the case, however she reported working "under the table."

Gullatt testified that in their current placement with their relative, the minor children are happy, well-cared for, and thriving. JS expressed a desire to stay in his current placement. It was Gullatt's opinion that the current placement is safe, and provides the children with a loving, nurturing environment. She opined that respondent had not benefitted from the services that had been provided to her, as demonstrated by her outbursts, anger, threats toward others, and continued substance abuse. In essence, according to Gullatt, nothing had changed during the pendency of the matter.

Respondent testified that she visited her children "no more than every other day," and her most serious issue is her marijuana use. According to respondent, she voluntarily entered, and was discharged from, a two-week substance abuse program through S.H.A.R.E. House. Respondent admitted to having a "drug problem" and stated she felt she would benefit from long-term inpatient drug therapy. She planned to enter a long-term impatient clinic sometime after the termination hearing.

Regarding her demeanor, respondent stated that her "attitude is not going to go away. I had this attitude since birth. That's just—that's just me. I'm strong-willed and if I feel like somebody is lying or things aren't going like I know they should go, I do get a little offensive." According to respondent, despite having threatened others on many occasions over the course of their relationship, respondent has never acted out on those threats, i.e. she never intended to act on her threats against Gullatt. When asked why she threatens people, respondent explained, "I guess it's just my behavior, my demeanor. I'm not for [sic] sure."

Respondent claimed she benefitted from her parenting classes, particularly the second time she completed them, contending that she learned to not use physical forms of punishment on her children. She characterized her visits with her minor children as positive and asserted that she acted appropriately. However, respondent admitted she still has "an attitude problem," and if given another chance, respondent would benefit from additional services.

[3] During the pendency of this matter, Southwest Solutions, which provides housing to those with severe mental illness, was paying respondent's rent and utilities.

Respondent went on to testify that the current home where the minor children reside is not a good environment for the children. She claimed their current care giver is not stable, has moved several times, and on numerous occasions her "lights and gas had to be cut on illegall[y]." Respondent asserted that she had witnessed the current care giver smoking marijuana in the home on one occasion, three weeks prior to the current hearing. She also denied that JS is fearful of her.

When asked if she could care for her children presently, respondent believed she "can take care of [her] kids by [her]self." However, she admitted needing help for herself, and needs "more time to reflect on [respondent] to find out what [respondent] needs to get herself better[, because] if I'm not healthy, how can I raise two healthy kids?" "But, yes, I have some issues I have to take care of so, currently, right this day, no, I'm not well to take two kids home with me. No, I am not. But will—will I be, yes . . . ."

Following the testimony, the trial court noted that, despite two years of efforts, respondent had not complied with her treatment plan, and respondent admitted that she needs more time before she is ready to care for her children. The trial court stated that "what brought us in here was the fact that her violence got the better of her and she caused extreme, physical abuse to her—to her child, JS." The trial court stated its belief that respondent's anger issues stemmed from her mental health problems, and that it was clear from respondent's conduct that she was unable to address those problems on her own. The trial court could not "see that she is [going to] be a parent able to take care of either child the way the [c]ourt sees a parent to be."

The trial court noted that, although respondent was provided with parenting and anger management classes, her conduct demonstrated that she did not benefit from those classes, and also pointed out that respondent did not comply with the drug testing requirement of her treatment plan, and that a psychological evaluation had to be cancelled because of respondent's physical aggression. The trial court noted that JS had stated that he did not want to live with his mother, and that respondent refuted whether this was still true. The trial court found that reasonable efforts had been made to reunify the family, and that these efforts had been unsuccessful. The trial court then found that termination of respondent's parental rights was appropriate under MCL 712A.19b(3)(c)(*i*), (g), and (j), as those grounds had been proven by clear and convincing evidence.

In making its best interests determination, the trial court noted that JS stated he did not wish to return to his mother, and that "M[S] is not of an age to voice a concern." The trial court discussed that the children's need for permanency weighed in favor of terminating respondent's parental rights. Accordingly, the trial court found that it was in the children's best interest to terminate respondent's parental rights.

III. REASONABLE EFFORTS

On appeal, respondent first argues that the trial court erred when it found that petitioner, the Department of Human Services ("DHS"), made reasonable efforts to reunify the family. "The time for asserting the need for accommodation in services is when the court adopts a service plan . . . ." *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). However, respondent "failed to object or indicate that the services provided to [her] were somehow

inadequate, thereby failing to preserve the issue." *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Because the issue is unpreserved, review is for plain error affecting substantial rights. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citations omitted).

"Generally, when a child is removed from the parent['s] custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *Frey*, 297 Mich App at 248. A respondent must also demonstrate that he or she has benefitted from services proffered. *Id*.; see also *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated by *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).

Respondent claims that, given her history of marijuana use, DHS was required to provide respondent with inpatient substance abuse services. However, in a report admitted at the May 24, 2012, dispositional review hearing, DHS reported that:

> [Respondent] admitted to smoking about 20 blunts a day and indicates she has been smoking marijuana since age 14 and is un[a]ble to stop without experiencing uncomfortable withdrawal symptoms. DHS suggested that she contact SEMCA for a telephone as[s]essment with possible inpatient treatment. [Respondent] agreed to call on Monday, May 14[, 2012]. She did call and was accepted for inpatient services[,] however, she changed her mind and said she would be ready to admit herself the following day[,] May 15[, 2012]. Currently, her therapist with Southwest Solutions reports that she is in Shar house [sic, S.H.A.R.E. House], as of yesterday, May 22[, 2012], an inpatient treatment facility.

Thus, DHS did attempt to provide respondent with inpatient drug treatment services, and respondent was accepted into the program; however, respondent then chose to attend a different program, one that lasted only one week. Essentially, respondent's argument is premised on asking this Court to find error on the part of DHS for her own refusal to attend the inpatient program recommended by DHS. Not only does this argument defy logic, it also defies the factual evidence. DHS referred respondent to substance abuse counseling on three separate occasions, but respondent was terminated from these programs for noncompliance. The trial court ordered that respondent participate in random drug screenings, and DHS provided bus tickets to allow respondent to travel to the testing location. However, respondent did not attend 69 screenings, and when she did attend, respondent tested positive for marijuana more often than not. The record demonstrates that DHS provided more than adequate services to respondent in regard to her marijuana use, but that respondent did not fully participate in and did not benefit from these services. In this regard, termination of respondent's parental rights was not erroneous for lack of reasonable efforts towards reunification. See *Frey*, 297 Mich App at 248.

Respondent also argues that DHS provided inadequate services to address her anger management issues. This argument is specious, given that respondent herself testified that she was happy she took the course a second time, and that she felt that she had made significant improvement after completing the course the second time. Again, the evidence herein cited, demonstrates that DHS made significant efforts to remedy respondent's anger issues, but that respondent did not live up to her "commensurate responsibility . . . to participate in the services that are offered[,]" nor did she benefit from the services offered. *Frey*, 297 Mich App at 248. "Consequently, the trial court did not clearly err by finding insufficient compliance with and benefit from the services provided by the DHS, necessitating the termination of respondent['s] parental rights." *Id.*

Respondent next argues that DHS's efforts were inadequate because DHS did not pursue family counseling to repair the relationship between respondent and JS. However, family counseling was suggested at various points, but could not be implemented because JS's individual therapist did not believe that he was ready to begin family counseling with respondent. At the May 16, 2013, dispositional review hearing, the court was informed that JS was finally willing to begin such counseling; however, because of the length of time the case had been ongoing, the trial court ordered that a permanent custody petition be filed. In addition, both JS and respondent received individual counseling, and respondent was allowed supervised visitation with JS in her own home, an effort that would address the same underlying issue—the bond between respondent and JS—that respondent believes family counseling would have addressed. Under these circumstances, DHS's failure to pursue family counseling was not unreasonable. Accordingly, the trial court did not err when it determined that DHS made reasonable efforts to reunify the family.

Respondent also briefly argues that DHS should have provided her with employment assistance, pointing to testimony at the termination hearing that she interprets as stating that no such services were provided. However, at trial, the DHS worker did not testify that no such services were provided; rather, she stated that she had "never asked any other worker what they have done as far as trying to help her get a job." The same worker also testified that respondent was not cooperative in seeking a job. Further, at a hearing held on August 14, 2012, the DHS worker then assigned to the case testified that she had provided employment referrals to respondent, as well as bus tickets for transportation, but that respondent did not participate in the referrals. As the record demonstrates DHS did make efforts to assist respondent in obtaining employment, but respondent did not participate, respondent's contention lacks merit. See *Frey*, 297 Mich App at 248.

IV. STATUTORY GROUNDS

Respondent next argues that the trial court clearly erred when it found that termination of her parental rights was warranted under MCL 712A.19b(3)(c)(*i*), (g), and (j). "To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The trial court's findings are reviewed for clear error. *Id.* at 33; see also MCR 3.911(K). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *Ellis*, 294 Mich App at 33. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction

that a mistake has been made." *Id*. In reviewing the trial court's determination, this Court must give due regard to the unique opportunity of the trial court to judge the credibility of those witnesses who appeared before it. *Id*.; see also MCR 2.613(C); MCR 3.902(A).

Under MCL 712A.19b(3)(c)(*i*), termination is appropriate if:

> [t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, an initial dispositional order regarding JS was entered on December 2, 2011, and an initial dispositional order regarding MS was entered on June 1, 2012. Thus, by the date of the order terminating parental rights, September 20, 2013, more than 182 days had elapsed since the issuance of the initial dispositional orders.

The record clearly reveals that the conditions which led to the adjudication were respondent's physical abuse of JS, her mental health issues, and her marijuana use, including using marijuana while she was pregnant with MS. Unquestionably, these conditions still existed at the time of the termination hearing. In fact, this conclusion is not in dispute as respondent admitted at the termination hearing that she was not ready to care for the minor children. Accordingly, termination was warranted under MCL 712A.19b(3)(c)(*i*).

Although only one statutory ground need be demonstrated to terminate parental rights, *Ellis*, 294 Mich App at 33, termination was also appropriate under MCL 712A.19b(3)(g) and (j). Under MCL 712A.19b(3)(g), termination is appropriate where "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Our Supreme Court "has held that a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Here, the parent-agency agreement, which was adopted by the court, required respondent to rectify her substance abuse problems, and demonstrate that she was no longer abusing marijuana by providing negative drug screens. Respondent failed to comply with her drug testing requirement, and admitted that she still had a substance abuse problem at the time of the termination hearing. Respondent's failure to comply with her treatment plan was evidence that respondent could not provide proper care and custody of her children, as was her inability to comply with and benefit from those services in which she chose to participate, such as her anger management classes and substance abuse counseling. *Id*.; see also *Gazella*, 264 Mich App at 677 ("[B]enefiting from the services [is] an inherent and necessary part of compliance with the case service plan.")

Respondent was clearly unable to rectify her anger and substance abuse problems during the prior two years, despite being provided with, and participating to varying degrees in, a number of different treatment programs. With this history in mind, the trial court did not clearly err when it determined that respondent was not likely to resolve her substance abuse and anger

issues within a reasonable time. Accordingly, termination was appropriate under MCL 712A.19b(3)(g).

Termination is appropriate under MCL 712A.19b(3)(j) where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent herself stated that she was not well enough to care for her children. Given respondent's prior history of refusing or otherwise failing to attend various therapy appointments, there was a significant chance that respondent would not comply with the requirements of the local program, and thus, lose her housing benefits. The trial court did not clearly err when it determined that there was a reasonable likelihood of harm to the children if returned to respondent's home. Accordingly, termination was appropriate under MCL 712A.19b(3)(j).

V. BEST INTERESTS DETERMINATION

Respondent argues that the trial court clearly erred when it determined that termination of her parental rights was in the best interests of the children. "If a statutory ground for termination is established and the trial court finds 'that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.'" *Ellis*, 294 Mich App at 32-33, quoting MCL 712A.19b(5). Review of the trial court's determination that termination is in the best interests of a child is reviewed for clear error. MCR 3.977K; *Ellis*, 294 Mich App at 33. When making a determination of whether termination of parental rights is in the best interests of a child, the trial court must consider "the evidence on the whole record . . . ." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "[T]he preponderance of the evidence standard [of proof] applies to the best-interest determination." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

As of May 14, 2013, respondent's relationship with JS was described as "very poor." In April, 2013, JS's therapist reported that JS was scared of respondent, fearing that respondent would resume physically assaulting him and MS. JS reported that he wished to stay in his current placement. Respondent herself testified that JS was hesitant to return to her care because of respondent's continued drug use. Because MS was removed from respondent's care shortly after birth, the trial court was correct to conclude there was little, if any, bond between MS and respondent. Given this evidence, the trial court's conclusion that "there is no significant parental bond" was not clearly erroneous. Respondent admitted that she was not fit to care for her children at the termination proceeding. Respondent was still abusing marijuana, admitted she had an attitude problem, and stated that she believed her threatening behavior was a part of her demeanor that would not change. Further, the children had been in care for approximately two years, and required permanency and stability. In contrast, the DHS worker testified that the children's current caretaker was able to provide a safe, loving, and nurturing home, and every visit to the home was appropriate. Under these facts, the trial court did not clearly err when it determined that termination was in the best interests of the children. See *Olive/Metts*, 297 Mich App at 41-42.

Respondent argues that a Clinic for Child Study was insufficient to establish that termination was in the best interests of the children. According to respondent, "[i]n making its findings on best interests, the [t]rial [c]ourt relied, in part, on the Clinic [for Child Study] evaluation." However, a review of the termination hearing transcript demonstrates that the trial court only briefly discussed this evaluation, and only in regard to its statutory grounds determination. Therefore, respondent's argument is without merit.

Respondent also asserts that the trial court did not adequately consider that the children were placed with a relative in making its best-interests determination. Although a trial court may terminate parental rights despite the fact that a child is placed with a relative, *In re IEM*, 233 Mich App 438, 453-454; 592 NW2d 751 (1999), overruled on other grounds *In re Morris*, 491 Mich 81, 122; 815 NW2d 62 (2012), "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best interests determination and requires reversal." *Olive/Metts*, 297 Mich App at 43. However, respondent merely asserts that the trial court did not adequately address the children's placement with a relative without further explanation of how or why this is the case. "The failure to brief the merits of an allegation of error is deemed an abandonment of an issue." *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled in part on other grounds *Trejo*, 462 Mich at 353.

Further, a review of the record demonstrates that the trial court did consider the fact that the children were placed with a relative. At the conclusion of the termination hearing, the trial court stated that the "[c]hildren are with the maternal grandmother." The trial court noted, however, that respondent did not want her children placed with her own mother. The trial court went on, stating:

> That—indicating that—that there's some time in the future that [respondent] may—the children may return to [respondent] I—I believe would be harmful to them. So, even understanding that they are with a relative, and that—[respondent]'s mother at that, [the c]ourt is [going to] find it's [going to] be in the best interests that her rights be terminated also for that reason.

Again, contrary to respondent's assertions, the trial court clearly considered that the children were placed with a relative, and found that, despite this placement, termination was in the best interests of the children. As discussed above, this conclusion was not clearly erroneous. Accordingly, respondent is not entitled to relief.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto